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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JAMES EUSSE, JR.,
11 Plaintiff,
12 v.
13 MARCO VITELA, et al.,
14 Defendants.
15 _____

Civil No. 13-CV-916 BEN (NLS)

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S
REQUEST FOR APPOINTMENT OF
COUNSEL**

(Dkt. No. 39)

16 Pending before the Court is Plaintiff's motion for appointment of counsel. (Dkt.
17 No. 39.) Plaintiff, who is proceeding *in forma pauperis*, argues that the complexity of
18 this case, restrictions on law library access, and eighth grade education will limit his
19 ability to litigate this case. He also argues that counsel will help him present evidence
20 and cross examine witnesses at trial.


21 "[T]here is no absolute right to counsel in civil proceedings." *Hedges v.*
22 *Resolution Trust Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). District
23 courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to "request" that an
24 attorney represent indigent civil litigants upon a showing of exceptional circumstances.
25 See *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Burns v. County of King*, 883
26 F.2d 819, 823 (9th Cir. 1989). "A finding of exceptional circumstances requires an
27 evaluation of both the 'likelihood of success on the merits and the ability of the plaintiff
28 to articulate his claims *pro se* in light of the complexity of the legal issues involved.'

1 Neither of these issues is dispositive and both must be viewed together before reaching a
2 decision.” *Terrell*, 935 F.2d at 1017 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,
3 1331 (9th Cir. 1986)).

4 Up to this point, Plaintiff has shown himself capable of litigating this action.
5 Additionally, Plaintiff has not yet shown a likelihood of success on the merits. Thus,
6 Plaintiff’s request for appointment of counsel is not warranted by the interests of justice.
7 *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987). Accordingly, the Court **DENIES**
8 **WITHOUT PREJUDICE** Plaintiff’s request for appointment of counsel. Plaintiff may
9 renew his motion if he so chooses at a later stage in the litigation.

10 **IT IS SO ORDERED.**

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12 DATED: February 12, 2015

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15 Hon. Nita L. Stormes
16 U.S. Magistrate Judge
17 United States District Court
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